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USING INTERNATIONAL LAW TO PROMOTE INCLUSIVE PEACE AND POST-CONFLICT CONSTITUTIONAL REFORM: INSIGHTS FROM SOUTH SUDAN



Using International Law to Promote Inclusive Peace and Post-Conflict Constitutional Reform: Insights from South Sudan

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to

The Expert Group for Aid Studies (EBA)

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Sammanfattning

Forskning visar att freds- och post-konflikt konstitutionella reformprocesser har större sannolikhet att leda till hållbar fred och demokrati när de inte bara inkluderar konfliktparterna utan även det bredare samhället. Men hur kan sådan inkludering främjas på ett effektivt sätt? Även om folkrätten innehåller ett antal rättsregler som kan tolkas ge stöd för inkluderande processer, har vi begränsad kunskap om hur dessa rättsregler i praktiken påverkar deltagandet. Påverkar folkrätten vem som deltar i freds- och post-konflikt konstitutionella reformprocesser? Och om så är fallet, vilka rättsregler och på vilket sätt?

Denna rapport besvarar dessa frågor och sammanfattar en avhandling från 2025 med titeln *We, the Generals: International Law and Authority to Change the Constitution in Peace Processes after Civil War*. Avhandlingen argumenterar för att folkrättens rättsregler kan vara förknippad med olika förväntningar som påverkar aktörers beteende och därmed vem som deltar i freds- och konstitutionella reformprocesser. Detta genom ett nytt interdisciplinärt angreppssätt som kombinerar juridiska metoder med empiriska samhällsvetenskapliga metoder, inklusive en djupgående studie av fredsprocessen i Sydsudan. Genom att mänskliga rättigheter och afrikansk regional folkrätt om demokratisk samhällsstyrning åberopas under förhandlingar samt i rådgivning, påverkansarbete och utbildning kan det leda till att aktörer bestämmer sig för att skapa en mer inkluderande process. Samtidigt kan andra rättsregler, genom att påverka uppfattningar om olika aktörers lämpliga roller i processen, förstärka auktoriteten hos konfliktparterna. Sammantaget erbjuder avhandlingen viktiga insikter för myndigheter och partnerorganisationer i hur de kan använda folkrätten för att främja inkluderande freds- och post-konflikt konstitutionella reformprocesser.

Abstract

Research shows that peace and post-conflict constitutional reform processes are more likely to lead to sustainable peace and democratic governance where they include not only the conflict parties but also the broader society. But how can such inclusive processes be effectively promoted? While international law contains a number of rules that may be understood to support the participation of the broader society in peace and constitutional reform processes, if and how such rules affect participation in practice has received little scholarly attention. Does international law affect who participates in peace and post-conflict constitutional reform processes? If so, which rules and how?

This brief responds to these questions and summarises the doctoral dissertation, *We, the Generals: International Law and Authority to Change the Constitution in Peace Processes after Civil War*. Through an interdisciplinary approach combining legal and empirical social science methods, including an in-depth study of the South Sudan peace process, it argues that international legal rules can give rise to a range of expectations that influence behaviour and affect who participates in peace and constitutional reform processes. Through their invocation during negotiations, and in advice, advocacy and training, international human rights law and African international law on democratic governance may influence actors to decide on a more inclusive process. However, by shaping understanding as to the appropriate role of different types of actors in the process, other international legal rules may reinforce the overriding authority of the conflict parties. Taken together, the findings offer important insights for Swedish development cooperation agencies and partner organisations on how they can use international law to promote inclusive peace and post-conflict constitutional reform processes.

1 Background and rationale

There is a close relationship between peace and constitutional reform processes. Peace processes are often themselves exercises in constitutional reform: many peace agreements establish interim constitutional frameworks or processes for lasting constitutional reform. Existing research shows that the effectiveness of both types of processes in contributing to peace and democracy is significantly affected by who participates in them. Processes that do not reflect the agreement of the conflict parties are unlikely to be effective (Benomar, 2003, 6; Saati, 2015, 270–274). Peace processes that include women and civil society are more sustainable (Nilsson, 2012; Krause et al., 2018). Similarly, constitutional reform processes that involve the broader society are regarded as more likely to be effective (Saati, 2005, 20–22).

While useful in theory, inclusion can be hard to achieve in practice. In the field of international law, there has been significant research on what such rules require or suggest as a matter of law, i.e. what international law ‘says’ (see e.g. de Groof, 2020; Kastner 2015; Pajuste 2021, Turner 2020). However, there has been less such research on how such rules affect participation in practice, i.e. what international law ‘does’. Separately, empirical social science research on inclusion in peace processes has concentrated on its effects and modalities (see e.g. Krause 2018; Nilsson 2012; Nilsson and Elfversson 2022), while research on the role of norms in peace processes has focussed largely on those norms that explicitly support inclusion (see e.g. Hellmüller et al, 2020; Pring and Federer 2020). The dissertation *We, the Generals* addresses this gap, responding to the question: how does international law affect participation and authority in peace and constitutional reform processes after civil war?

The dissertation applies a novel interdisciplinary approach that comprises three components: an analysis of international legal rules, a quantitative analysis of global peace agreement practice, and an in-depth study of the South Sudan peace

process. The dissertation first develops an integrated theoretical framework on the effects of international law on participation and authority. To do so, it combines a broad range of theories from law, international relations, and other social science disciplines, before applying legal methods to identify relevant international legal rules and the expectations to which they may give rise. It then explores this theoretical framework in a single illustrative case study. The South Sudan study draws on 28 interviews with 33 respondents directly involved in the peace process or otherwise highly knowledgeable about it, conducted during two field visits to Juba in January–February 2022 and April–June 2022. Drawing on the theoretical framework, interview data was analysed for indications of international law’s influence, with a focus on ‘fit’ between behaviour and law-based expectations and motivations for following international law.

The central finding of *We, the Generals* is that international law may affect participation and authority through multiple and potentially contradictory ways. Through its invocation during negotiations, and in advice, advocacy and training, international human rights law and African law on democratic governance may influence what peace process participants decide about participation, in turn leading to broader societal inclusion. However, international law does not necessarily always support inclusion. By shaping understandings of the appropriate roles of different actors, international law may contribute to the overriding authority of governments and armed groups in a manner that promotes exclusion.

2 International law and expectations relating to participation

The first component of *We, the Generals* analyses international legal rules relevant to participation in peace and constitutional reform processes and identifies the various behavioural expectations to which they may give rise. The

dissertation takes a broad approach to identifying expectations that may arise from such rules, drawing on the international relations scholar Rosert's (2024) typology of the multiple effects of international norms.¹

A key finding of *We, the Generals* is that a single international legal rule may give rise to multiple behavioural expectations about participation. Such expectations may arise directly from the explicit content of legal rules, or indirectly by implication. A legal rule instructs a certain actor to perform (or abstain from) a certain behaviour in a certain situation. It thereby communicates the appropriateness of that actor performing that behaviour. By implication, it may also communicate the inappropriateness of that actor performing another behaviour, and of another actor performing the behaviour in question. Many international legal rules are also vague, and their expectations, whether explicit or implied, may be differently understood.

For example, under international law, parties to any dispute that poses a threat to international peace and security are obliged to settle their dispute peacefully. A threat to international peace and security is generally understood to include armed conflicts between governments and organised armed groups. The international law duty to settle disputes peacefully may, therefore, give rise to the expectation that governments and organised armed groups settle their disputes peacefully. By implication, the duty may also give rise to the expectation that governments and organised armed groups undertake the activities necessary to do this, such as negotiating and concluding peace agreements.

2.1 Expectations of broad societal participation

The analysis shows that several international legal rules give rise to expectations of broad societal participation in peace and constitutional reform processes.

¹ In the dissertation, 'norms' are understood in accordance with a sociological approach to be "collective expectations for the proper behaviour of actors with a given identity" (Katzenstein, 1996, p. 1).

Such expectations arise from the explicit content of legal rules found within two main sub-fields of international law: international human rights law (applicable worldwide² and African international law on democratic governance (applicable only in Africa).³ They include:

- *women and persons belonging to commonly marginalised groups* enjoy effective representation in peace and constitution-making processes (right to non-discrimination, and the rights of women, youth, minorities, indigenous peoples, IDPs, and persons with disabilities);
- the *general public* decide constitutional reform (right to self-determination, right to vote and be elected, duty to ensure constitutional change reposes on national consensus under African international law);
- the *general public* be consulted on constitutional reform (right to self-determination, right to take part in public affairs, duty to ensure constitutional change reposes on national consensus under African international law);
- the *broader society* be included in the process of constitutional reform (right to self-determination);
- a broad range of *political parties* be included in the process of constitutional reform (duty to ensure constitutional change reposes on national consensus under African international law); and
- the process of constitutional change follows the rules of the existing constitution and, therefore, *involves the same categories of persons* (duty to ensure constitutional government under African international law).

² See International Covenant on Civil and Political Rights 1967, articles 1, 2, 25; Convention on the Elimination of All Forms of Discrimination against Women 1979, article 7; Convention on the Rights of Persons with Disabilities 2006, article 29(b).

³ See African Charter on Democracy Elections and Governance 2007, articles 5, 10(1), 10(2).

2.2 Expectations recognising the authority of conflict parties

The analysis shows, however, that several other international legal rules give rise to expectations that recognise the authority of governments and organised armed groups, i.e. the conflict parties, to negotiate and decide peace agreements. Such expectations arise by implication from a broad range of international legal rules,⁴ many of which incorporate common concepts found throughout international law, such as armed conflict, organised armed group, the state, and international peace and security. Notably, several of these concepts originate in international humanitarian law, a branch of law directed towards limiting the destruction of war rather than fostering peace or democratic governance. Such expectations include:

- *incumbent governments and organised armed groups* negotiate and decide peace agreements (duty to perform treaties in good faith, duty to settle disputes peacefully);
- international organisations mediate armed conflict between *governments* and *organised armed groups* so that such actors participate in peace processes (prohibition of intervention, duty to settle disputes peacefully);
- international organisations obtain the consent of the *incumbent government* before mediating in an internal conflict, and therefore that such governments participate in peace processes (prohibition of intervention); and
- domestic and international actors implement, or support the implementation of, peace agreements, and therefore the collective decision of the *peace process participants* (duty to perform treaties in good faith, duties to carry out the decisions of international organisations).

⁴ See in particular Vienna Convention on the Law of Treaties 1969, article 26; Charter of the United Nations 1945, articles 2(3), 2(7), 25, 33.

2.3 Factors affecting the likelihood that expectations of inclusion arise

In a particular peace or constitutional reform process, the likelihood that international law gives rise to expectations of inclusion may depend in part on how the relevant process is primarily understood. Expectations of broad societal inclusion are more commonly associated with rules relating to constitutional reform, whereas expectations recognising the authority of the conflict parties are more commonly associated with rules relating to peacemaking.

If international law *does* give rise to expectations of inclusion, whether such expectations relate to substantive participation, or a more minimal form of involvement, may depend significantly on how the relevant legal rules are interpreted and what they are understood as requiring in the specific context. Many international legal rules are vague. While this allows for them to be applied flexibly across a range of circumstances, it also allows for the scope of obligation to be read down.

For example, both the right to self-determination, and the duty to ensure that constitutional change reposes on national consensus, are commonly understood to require that the general public decide constitutional change, such as through elected representatives or by referendum. Both rules can, however, also be understood to require only that the general public be consulted (e.g. through a public consultation scheme). Similarly, the right to take part in public affairs may be understood to require that governments take active steps to facilitate effective participation, or only that they provide some opportunity to participate.

Further, while several international legal rules have been understood as requiring that peace and constitutional reform processes be ‘inclusive’ there are significant differences as to what is meant by inclusion. The analysis shows that international legal rules are associated with at least three different understandings (see e.g.

Hirblinger and Landau, 2021). The right to self-determination is associated with an understanding of inclusion that sees broad societal participation as a means towards democratic legitimisation. By contrast, the rights of women and commonly marginalised groups are associated with a ‘checklist’ approach that sees the inclusion of such groups as a means towards their empowerment. Separately, the duty to ensure that constitutional change reposes on national consensus sees the participation of a broad range of political parties as a means towards ensuring the representation of minority groups.

3 International law and the South Sudan civil war peace process

The final component of *We, the Generals* examines how international law affected participation in the South Sudan civil war peace process.

Negotiations to resolve the South Sudan civil war took place between 2014 and 2018, mediated by the Intergovernmental Authority on Development (IGAD), an East African sub-regional organisation. Participants in the peace process included the two main officially designated Parties: the Government of South Sudan and the Sudan People’s Liberation Movement-In Opposition (SPLM-In Opposition), together with other opposition groups and civil society. A peace agreement signed in 2018, the Revitalised Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS), established a power-sharing government, underpinned by a transitional constitutional framework. The agreement also set out a process and a set of principles to guide the making of a new permanent constitution.

The first part of the case study examines how international law shaped the participants’ understanding on the design of the permanent constitution-making process. The second part examines how international law shaped

actors' understanding of the peace process more broadly, affecting who participated in the peace process and the scope of their authority.

3.1 The permanent constitution-making process

Participants in the South Sudan peace process decided that the permanent constitution-making process would include the general public, women, commonly marginalised and vulnerable groups, and the officially designated Parties. Analysis of interview responses and other sources indicates that international law contributed to the participants' understanding concerning the first three categories of persons.

3.1.1 The general public

The peace agreement provided that the general public would participate in the process to make a permanent constitution, although only in relation to proposing and discussing its content. Additionally, a broadly inclusive 1000-member National Constitutional Conference would debate the draft. However, while it was initially proposed that the general public would elect the National Constitutional Conference, participants ultimately decided that the body would instead be *selected* by them. Moreover, after the National Constitutional Conference, final deliberation and adoption would take place in the Transitional National Legislature, a body selected in large part by the officially designated Parties.

Delegates were already aware of international law concerning the participation of the general public in constitutional reform processes. African law on democratic governance was explicitly invoked during the negotiations; a former IGAD staff member described how there was a “short discussion” on the need to have a constitution consistent with international, and especially African regional norms on democratic governance, to “go by African standards”.

International actors also provided advice that both cited and was based on international law, including in relation to public consultation.

Respondents gave multiple reasons as to why participants were inclined towards following international law. A former civil society delegate explained that “we [South Sudanese] are not an island of our own; we have to adhere to certain global standards.” The former delegate noted that as this was the first time South Sudan had embarked on a process to make a permanent constitution, there was limited domestic precedent upon which to draw. In such circumstances, international law could provide a useful source of policy guidance. A civil society representative similarly explained “it’s easier to draw examples, positive examples from what already works. Rather than trying and failing, trying and failing and going through that process on your own”. The former civil society delegate added, however, that participants were also more likely to follow international law where they could “see the return” and if there was an “opportunity to gain from external support”.

3.1.2 Women

The peace agreement provided that women would participate in the process to make a permanent constitution, albeit explicitly only in relation to its drafting. While the Constitutional Drafting Committee was to comprise at least 35% women, no such quota was specified in relation to the deliberative and adopting bodies, i.e. the National Constitutional Conference and the Transitional National Legislature.⁵

The decision to specify a 35% quota for women in the Constitutional Drafting Committee followed a substantial campaign in which civil society groups successfully sought to raise the generally recognised 25% quota for women’s participation in government to 35%, and to extend this quota specifically to the

⁵ A 25% quota for women’s representation in the legislature is, however, specified in the 2011 Constitution.

permanent constitution-making process. As part of this campaign, civil society representatives, together with the UN, directly invoked international law and provided advice and engaged in advocacy based on international law.

During the peace process, women's civil society groups analysed the discussions and agreements and identified gaps with respect to women's inclusion. While their analysis drew foremost on domestic instruments, international legal instruments were frequently cited, especially where there were gaps in domestic law. This analysis informed position papers that the groups shared directly with the peace process participants.

More broadly, civil society groups cited international law in papers they shared with policy-makers, including women. They similarly invoked international law in seminars with national and local parliamentarians, as well as in dialogue with the judiciary and with the local community. For attendees of these sessions, learning that the representation of women in political processes was not just an aspiration but an internationally-recognised legal right encouraged them to engage in support of the broader campaign. Beyond such targeted advocacy, civil society representatives also engaged in general public awareness-raising, developing a "simplified toolkit for awareness-raising on women's rights" based on international law. In addition to the civil society campaign, the UN also engaged in advocacy, advice and training, much of it based on international law.

Three respondents, including two former delegates, explained that in light of the civil society campaign, it was difficult for anyone to object to the quota because it would look bad. As expressed by one former delegate,

The Parties were happy to accept it. And whoever wasn't happy of course, all these [civil society] groups were there. They spoke for themselves. And many stakeholders also stood with them. And whoever was trying to say no, could not say no.

3.1.3 Commonly marginalised groups

The peace agreement provided that commonly marginalised groups would participate in the process to make a permanent constitution. The National Constitutional Conference was to be an inclusive deliberative body with over 1000 representatives from at least 13 categories of persons, many of whom were commonly marginalised: women, youth, internally displaced persons (IDPs), refugees, war widows, veterans and, war wounded.

The list of categories to be represented includes many groups recognised under international law as requiring special efforts to ensure their effective participation in political processes, including women, youth, persons with disabilities and IDPs. A former SPLM-IO delegate explained that the drafters of the Constitution Making Process Act drew on groups already recognised elsewhere, in particular in the 2011 Constitution, which in turn drew on the 2005 Constitution and 2005 Comprehensive Peace Agreement.

3.1.4 The Parties

Under the peace agreement, the Transitional National Legislature—the body that would adopt the permanent constitution—was to comprise existing members of parliament elected at the 2010 Southern Sudan regional elections (many of whom were already affiliated with Parties) plus an additional 128 new members selected by the officially designated Parties according to a power-sharing formula. In such a way, the Parties were to enjoy ultimate decision-making authority over the permanent constitution.

Several international legal rules may give rise to the expectation that the general public decide constitutional reform. Consistent with such an expectation, three former delegates explained that several participants had expressed concerns as to whether the Transitional National Legislature was the appropriate body to

adopt the constitution, in particular given that it was largely selected by, and reflected the interests of, the Parties. More generally, it was considered necessary that the process as a whole be consultative and inclusive.

Nevertheless, participants ultimately concluded that this would not be inappropriate given that some of the members of the Transitional National Legislature had previously been elected. Moreover, in practice, former SPLM-IO delegates and a former civil society delegate explained that the legislature's role would be limited to ratification, and a more inclusive body, the National Constitutional Conference, would perform the substantive deliberation. A former advisor to the IGAD Mediation explained that "there was the idea that if the process is quite robust in being more consultative and more inclusive in its earlier phases, then this later ratification phase isn't as significant". Notably, however, nothing in the peace agreement explicitly limited the Transitional National Legislature's authority accordingly.

3.2 Participation and authority in the peace process

Participants in the peace process included two main officially designated Parties: the Government of South Sudan and the SPLM-In Opposition, together with other Parties (political parties and other opposition groups), and Stakeholders (civil society, faith-based leaders and eminent personalities). Analysis of interview responses and other sources indicates that throughout the peace process the Government and SPLM-In Opposition held overriding authority, including to adopt the transitional constitutional framework. Other Parties and Stakeholders, by contrast, held a more limited authority, largely confined to consultation and approval. Analysis suggests further that international law contributed to IGAD's understanding of the peace process, and the role of different actors in it, and that this in turn contributed to this distribution of authority. Separately, analysis suggests that international law contributed to domestic actors' understanding of the status of the peace

agreement, thereby strengthening the authority of those who created it: i.e. the participants as a whole.

3.2.1 The Government and the SPLM-In Opposition

Several international legal rules may give rise to expectations that governments and organised armed groups negotiate and decide peace agreements. Under international humanitarian law, an armed conflict arises where there are hostilities between two or more governments, significant hostilities between a government and an organised armed group, or significant hostilities between such groups. An organised armed group is one with significant military capacity.

Consistent with such an understanding, it was only following the outbreak of large-scale violence on 15 December 2013, including attacks against civilians (a clear violation of international humanitarian law), that IGAD sought to establish a formal peace process. This was despite the organisation having been aware of escalating tensions for some time, according to a current IGAD official and a former IGAD staff member. At the time of the process, the SPLM-In Opposition clearly exceeded the threshold for an organised armed group under international humanitarian law, described by one legal academic as a “formidable force”.

IGAD summit communiques are replete with international humanitarian law language, referring to concern about armed conflict between government forces and armed groups, and the proliferation of armed groups (Intergovernmental Authority on Development, 2017a; Intergovernmental Authority on Development, 2017b). One legal academic explained in the interview how in the early stages of the conflict, violations of international humanitarian law were a key concern of IGAD and other international actors, and a significant reason for initiating the peace process. Opposition political

party representatives, and another legal academic, noted further that international humanitarian law had guided the initial ceasefire negotiations, as well as discussions early in the process on humanitarian assistance.

Consistent with this understanding of the objective of the peace process, the Mediation recognised its first and overriding task to be stopping large-scale violence; its approach to participation was therefore guided by “who was fighting and who was not” (Verjee, 2020, 290). Beyond the Government, it was up to the Mediation to identify other participants. In doing so, the Mediation focused on the other actor with significant military capacity: the SPLM-In Opposition. Their status as an official Party was then endorsed by the IGAD Heads of State and Government, according to a former IGAD staff member.

Once admitted and officially designated as Parties, the Government and SPLM-In Opposition became the primary decision-makers throughout the peace process, their authority understood to be broad. In relation to their authority to adopt a transitional constitutional framework, for example, a former advisor to the IGAD Mediation explained

I don't think the idea of transitional government was particularly controversial. It was much more about, well, what's the nature of it and what does it look like and how does it work? And how transitional is it, really?

A former IGAD staff member similarly described the negotiations on the permanent constitution-making process as “not very contentious”.

3.2.2 Other parties and stakeholders

Several international legal rules may give rise to expectations that constitutional reform processes be inclusive of the broader society. Consistent with such expectations, analysis indicates that IGAD adopted a formal policy of inclusion

after a push by the Troika (US, UK and Norway) and that this ultimately resulted in the addition of other Parties and Stakeholders (Underwood 2025, p. 215). Furthermore, the inclusion of these other actors was understood as necessary where decisions relating to governance and constitutional change were to be taken (Intergovernmental Authority on Development, 2013, paragraph 11; Agreement to Resolve the Crisis in South Sudan, 2014, article 10). In practice, however, there was considerable uncertainty as to what inclusion meant, resulting in difficulty in identifying the appropriate additional participants according to a former IGAD staff member.

Separately, as was discussed in relation to the authority of the Government and SPLM-In Opposition, analysis indicates that international law contributed to IGAD's understanding of the peace process and therefore the role of different actors in it. In accordance with this, the Government and SPLM-In Opposition were understood to be the primary decision-makers, and the authority of other Parties and Stakeholders considered to be secondary.

3.2.3 The participants as a whole

Analysis of interview responses and other sources suggests that the peace agreement has enjoyed a certain authority in South Sudan. For example, when the Parties breached the peace agreement, they expressed regret and a commitment to remedy the infringement, according to an interviewed Reconstituted Joint Monitoring and Evaluation Commission (R-JMEC) secretariat member. The Parties referred to the peace agreement when justifying their decision not to participate in its implementation mechanisms according to a civil society representative. Further, the transitional government, which includes the Parties, used the peace agreement as its constitution during the transitional period, according to a R-JMEC secretariat member. Separately, the Ministry of Justice and Constitutional Affairs treated the peace agreement as binding in relation to its work, according to a government official.

During the negotiations, several states and international organisations acted as guarantors or witnesses, and both the IGAD Heads of State and Government and the UN Security Council adopted resolutions endorsing the peace agreement. Several international legal rules may give rise to expectations that actors implement, or support the implementation of, peace agreements endorsed by international organisations. Consistent with such expectations, three legal academics referred to the endorsement of international organisations as raising expectations that the peace agreement be followed. According to one of the legal academics, while the Government did not want to implement the peace agreement “because they have a bad name in the region” they had to go along with it; they had to be seen to implement the agreement and to respect it. The Government was aware they would “lose credibility in the eyes of the international community” if they did not do so.

4 Conclusion and policy implications

We, the Generals shows that international law may affect participation in peace and post-conflict constitutional reform processes through ways that are more varied and complex than generally understood. The dissertation shows that international human rights law and African international law can be effectively used to promote inclusion, and suggests when such use is more likely to be effective. The dissertation also shows, however, that international legal rules can also contribute to understandings about participation that reinforce the overriding authority of the conflict parties, thereby contributing to exclusion. This suggests that greater attention must be paid to the wider normative environment within which peace processes are conducted, including the role of international legal rules in structuring and allocating authority.

The findings of the dissertation have particular relevance to Swedish development cooperation and partner organisations working in the fields of mediation

support, democratic governance, and peacebuilding. Promoting inclusive processes is a stated aim of Sida and the Folke Bernadotte Academy, as well as many Swedish civil society organisations and their international and domestic partners. The findings suggest that international law can be an effective tool to promote inclusion, but that there are also a number of challenges.

Challenge 1: The vagueness of international legal rules and unclear expectations about participation

International legal rules, such as the right to take part in public affairs and the right to self-determination, can enjoy widespread support without a clear understanding as to who should participate. In South Sudan, broad agreement that ‘the people’ should participate in the permanent constitution-making process was seen as compatible with an arrangement by which the National Constitutional Conference would be selected rather than elected, and final adoption remained with a legislature whose composition was largely determined by the Parties. There was similarly uncertainty within IGAD over what ‘inclusion’ required in the peace process. By contrast, civil society organisations were effective in using international law to expand women’s representation in the permanent constitution-making process by linking international legal rules to a specific quota, grounded in domestic norms and expectations.

Where an international legal rule is invoked in support of inclusion, organisations should, therefore, make explicit what form and degree of participation is considered necessary or appropriate to give effect to it. Domestic rules, norms and practices either from the country in question, or other contexts, may provide a useful source for identifying appropriate modalities.

Challenge 2: How international law is presented and invoked

The South Sudan case indicates that international law may influence behaviour for a variety of different reasons. Actors may follow international law not only

because they consider it appropriate or that they are legally obliged to do so, but also because it provides useful policy guidance in an area where domestic precedent is limited, or because it is perceived as politically neutral. In using international law, domestic civil society organisations may have particular advantages in connecting international law with local political traditions, legal rules and norms. International actors, however, may sometimes be better positioned to present international law as a neutral external standard.

For Swedish development cooperation and partner organisations, this suggests that legal advocacy should not automatically be framed in terms of legal obligation and compliance. In some circumstances, emphasising that a particular arrangement is legally required may be effective. In others, presenting an international rule as a widely recognised standard, a neutral benchmark or a source of tested policy practice may be more persuasive. Different approaches may also be appropriate in relation to different actors within the same process.

Challenge 3: How the subject of negotiation is framed and understood

In South Sudan, international human rights law and African law on democratic governance were significantly more influential when actors understood themselves to be designing the permanent constitution-making process than when they were designing the peace process, even though the peace process itself determined important aspects of the future constitutional order. How a negotiation is framed can therefore affect not only who is understood to have a legitimate role in it, but also which international legal rules are considered relevant, including in relation to participation.

Where negotiations are expected to concern issues such as transitional governance, power-sharing or constitutional reform, Swedish and partner organisations should therefore consider whether international legal rules concerning political participation and democratic governance are relevant, even where the process is principally framed as negotiations between conflict parties.

The timing of such consideration is also important. The South Sudan case illustrates how the initial design of a peace process can create path dependence. Once the Government and SPLM-In Opposition had been established as the primary Parties, they retained overriding authority despite later attempts to broaden participation.

Challenge 4: The under-recognised role of international law in allocating authority and contributing to exclusion

Finally, Swedish and partner organisations should be alert to the fact that international law may contribute to exclusion as well as inclusion. In particular, the use of often taken-for-granted international legal concepts such as ‘armed conflict’ and ‘armed groups’, as well as categories such as the ‘Parties’, can contribute to an assumption that the conflict parties possess the legitimate authority to determine the future political order.

Taken together, the findings of *We, the Generals* suggest five main recommendations for Swedish development cooperation and partner organisations:

1. *Clarify* how international law is expected to influence the relevant actors. Consider whether a rule is most effectively presented as a legal obligation, neutral standard, source of legitimacy or practical policy guidance.
2. *Make explicit* what international legal rules mean for participation and authority within the particular process. Distinguish observation and consultation from decision-making and ratification authority.
3. *Consider* who is best placed to invoke international law. Domestic partner organisations may be better able to connect international rules to domestic norms and practices, while Swedish organisations may have greater influence where an external or politically neutral standard is useful. Swedish organisations can also support domestic organisations by providing access to relevant legal expertise and comparative practice.

4. *Consider* how the framing of the subject of negotiation affects which international legal rules are considered relevant. Where a peace process is expected to determine constitutional or governance arrangements, consider whether international legal rules concerning public participation and democratic governance should inform process design. Do so as early as possible, before particular understandings of participation and authority become embedded.
5. *Be alert* to the exclusionary as well as inclusionary effects of international law. Concepts such as ‘armed conflict’, ‘armed groups’ and ‘the Parties’ can contribute to assumptions that conflict actors possess exclusive authority over the political settlement.

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Research shows inclusive peace and constitutional reform processes increase the chances of sustainable peace, but knowledge of international law's role remains limited. This brief shows that international law creates expectations that shape participation. Human rights law and African law on democratic governance can promote inclusion, while other rules can reinforce the conflict parties' authority. The report, including a case study of South Sudan, gives tools for using international law to promote inclusion.

Forskning visar att inkluderande freds- och konstitutionella reformer ökar chansen för hållbar fred, men kunskapen om folkrättens roll är begränsad. Rapporten visar att folkrättens regler skapar förväntningar som påverkar deltagandet. Mänskliga rättigheter och afrikansk internationell rätt om demokratisk styrning kan främja inkludering, medan andra regler kan stärka konfliktparternas auktoritet. Rapporten, med en fallstudie av Sydsudan, ger aktörer verktyg för inkluderande folkrätt.

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